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No. [redacted] 86

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

JESSE I. LINDER,
Appellant,

vs.

HOWARD B. COLLINS, LEONARD PILGER, and GEORGE L. BARTON, as members of The Board of County Commissioners of Wallace County, Kansas; E. L. RIVERS, ED V. MORIN, GLEN HUFFMAN, GEORGE HARRISON and EARL TEED, as members of The Board of Hospital Trustees of Wallace County, Kansas; C. E. SWANSON, as County Clerk of Wallace County, Kansas; BONNIE KNOUSE, as County Treasurer of Wallace County, Kansas; and JAMES W. BIBB, as the Budget Director of the State of Kansas,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

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IN THE

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OCTOBER TERM, 1957

No. 1051

JESSE I. LINDER,
Appellant,

vs.

HOWARD B. COLLINS, LEONARD PILGER, and GEORGE L. BARTON, as members of The Board of County Commissioners of Wallace County, Kansas; E. L. RIVERS, ED V. MORIN, GLEN HUFFMAN, GEORGE HARRISON and EARL TEED, as members of The Board of Hospital Trustees of Wallace County, Kansas; C. E. SWANSON, as County Clerk of Wallace County, Kansas; BONNIE KNOUSE, as County Treasurer of Wallace County, Kansas; and JAMES W. BIBB, as the Budget Director of the State of Kansas,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM.

STATEMENT.

The District Court dismissed the complaint for want of jurisdiction and not for want of equity. It did not purport to act on the merits of the case nor could it logically attempt to do so having determined that it was without jurisdiction in the premises. The District Court was not of the opinion that the complaint failed to state a cause

of action and appellees in their motion to dismiss in the District Court did not suggest that the complaint failed to state a cause of action. The substantial questions presented by this appeal are not answered by the motion to affirm.

Appellant has alleged that appellees acting under color of a state law have deprived him and all other persons in Wallace County, Kansas, of a hospital as provided for by the laws of Kansas and that appellant and other citizens of said county ought not to be deprived of a hospital and the use thereof by the unlawful acts of appellees which were sought to be validated by the challenged statute. The challenged statute violated the equal protection of the laws since it creates an unreasonable classification among Kansas counties, the classification being on the one hand counties which have hospitals under the laws of Kansas and on the other hand counties which can not have hospitals under the laws of Kansas by reason of the unlawful acts of the county commissioners.

The question in this appeal is whether an alleged violation of rights guaranteed under the federal Constitution by persons acting under color of state law may be heard by a federal court although there is neither diversity of citizenship nor $3000 involved and whether as an incident to the unlawful acts of appellees a tax of $2.20 has been assessed against appellant the District Court is without jurisdiction to declare the challenged statute unconstitutional and restrain the appellees. Must appellant pay a $2.20 tax before he may challenge the statute which de-

prives him and other residents of said county of a hospital such as is specifically defined and provided for by the laws of Kansas?

ARGUMENT.

Answering appellees in their motion to affirm appellant states:

1. That remoteness and lack of population of a Western Kansas county does not excuse law violation and the violation of federal constitutional rights of residents and citizens. Greeley County, Kansas, with a smaller population and which adjoins Wallace County, established and now maintains a county hospital under the same Kansas laws that appellees seek to avoid by the challenged statute.

2. The Fourteenth Amendment to the United States Constitution makes the whole of each of the states, not counties, as the units to which it applies, hence appellees contention that "appellant is treated the same as all other residents of Wallace County, Kansas", is irrelevant.

3. The Kansas county hospital laws give expression to the principles enunciated in said Fourteenth Amendment; they confer personal civil rights upon each resident of every county adopting their provisions, as is shown on page 5 of appellant's Jurisdictional Statement; they refer to truth; they state that they, themselves, have a spirit and by implication they assure each county that adopts their provisions and keeps faith with them, of spiritual benefits and a lustre which, of course, are incapable of pecuniary valuation. The right of a resident to place his sick, injured or maimed body in such a hos-

pital, as circumstances require, for treatment and cure or to die therein when a cure is impossible and to employ a physician of one's own choosing is a personal civil right that is incapable of a pecuniary valuation. The express purpose of the challenged statute is to deprive appellant and all other residents of Wallace County, Kansas, of that and other personal civil rights.

4. Neither diversity of citizenship nor the amount in controversy is a prerequisite to federal court jurisdiction of an action asserted under the Civil Rights Act. See Ortega v. Ragen, 349 U.S. 940, Copley v. Sweet, 353 U.S. 887, Browder v. Gayle, 353 U.S. 903 and Hague v. C.I.O., 307 U.S. 496. In Hague v. C.I.O., supra, it was not held that if a monetary value is affixed to a right secured by the Constitution jurisdiction of the District Court must be invoked under Title 28, U.S.C., Section 1331, and further, with reference to the Acts now known as Title 28, U.S.C. sections 1331 and 1343 the court said that said acts "must be read together" and that "it is obvious that neither is to be interpreted as abolishing the other . . ." and that to hold otherwise, section 1343 would be "meaningless and that a large portion of suits authorized by the Civil Rights Act can not be maintained in any Court although jurisdiction of them, with no requirement of jurisdictional amount was carefully preserved."

5. Notwithstanding the provisions of Title 28, U.S.C. section 1341, mentioned on page 5, appellees motion to affirm, federal courts acquire jurisdiction where there is a bona fide allegation of a violation of the civil rights of a

resident or citizen. The gravemen of appellant's complaint is the alleged denial to him of the equal benefits, privileges, immunities and protection of the Kansas laws and the taking of his property without due process of law. The actual tax complained of by appellant is a mere and minor incident of his cause which appellees seek to magnify and which they seek to prove to be the gravemen of his cause rather than the deprivation to him and others, of his and their personal civil rights. The tax complained of in this cause besides being a minor incident is a local matter. This Court has held that where a local matter, including a local or state tax, is only incidental in an action involving a federal question and that federal courts have jurisdiction to determine all matters involved in such an action, including the legality or constitutionality of such local matter or tax. In Railroad Commission, State of California v. Pacific Gas & Electric Company, 302 U. S. 388 this Court said:

> "Because of the federal question raised by the bill of complaint, the District Court had jurisdiction to determine all of the questions in the case, local as well as federal."

6. The cases relied on by appellees in their motion to affirm are inapplicable. In Aero Design & Engineering v. Oklahoma Employment Security Commission, 151 Fed. Supp. 844, the jurisdictional amount under Title 28, U.S.C. Section 1331, was in question which is not involved in the instant case. In George F. Alger Co. of Detroit, Mich., et al., v. Peck, et al., 119 Fed. Supp. 812, the action was

to enjoin the collection of a tax and was not a suit wherein restraint of the collection of a tax has an insignificant position as in appellant's case. Reiling v. Lacey, 93 Fed. Supp. 462 was a suit to set aside an assessment of taxes and declare a statute unconstitutional as applied to the particular plaintiff, a non-resident complaining of a Maryland income tax on income earned and paid in the District of Columbia. In Hoffman v. O'Brien, 88 Fed. Supp. 490, aff. 339 U.S. 955, the complaint did not allege that plaintiff as opposed to the public generally were affected by the challenged act. In the instant case appellant has alleged that he and all other persons in Wallace County, Kansas are adversely affected by the challenged statute and denied the equal protection of the Kansas laws. Kilgore v. McKethan, 205 Fed. 2d 425, was a suit against individuals rather than officials acting under color of state law. In appellant's case the suit is against individuals exercising governmental power and authority and acting under color of state law to allegedly deprive appellant and others of their personal civil rights. In Connor v. Rivers, 25 Fed. Supp. 937, plaintiff did not claim or allege that the challenged statute deprived him of any constitutionally protected right. In Dinneen v. Williams, 219 Fed. 2d 428, no state action or any one acting under color of state law was involved.

CONCLUSION.

The questions presented by this appeal are substantial and of great public concern and importance. The District Court in this case impaired its jurisdiction and unsettled questions previously decided by this Court by clearly and definitely holding that federal courts have no jurisdiction to protect persons resident in the United States from violation of their civil rights unless there is involved in all of their cases a diversity of citizenship and $3000. The judgment of the District Court should be reversed and the cause should be remanded to the District Court to determine whether appellant is entitled to the equitable relief he seeks. The motion to affirm should be denied and probable jurisdiction noted.

Respectfully submitted,

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